55

Office - Supreme Court, U
FILED
MAR 25 1953
HAROLD B. WILLEY, Cl

SUPREME COURT OF THE UNITED STATES

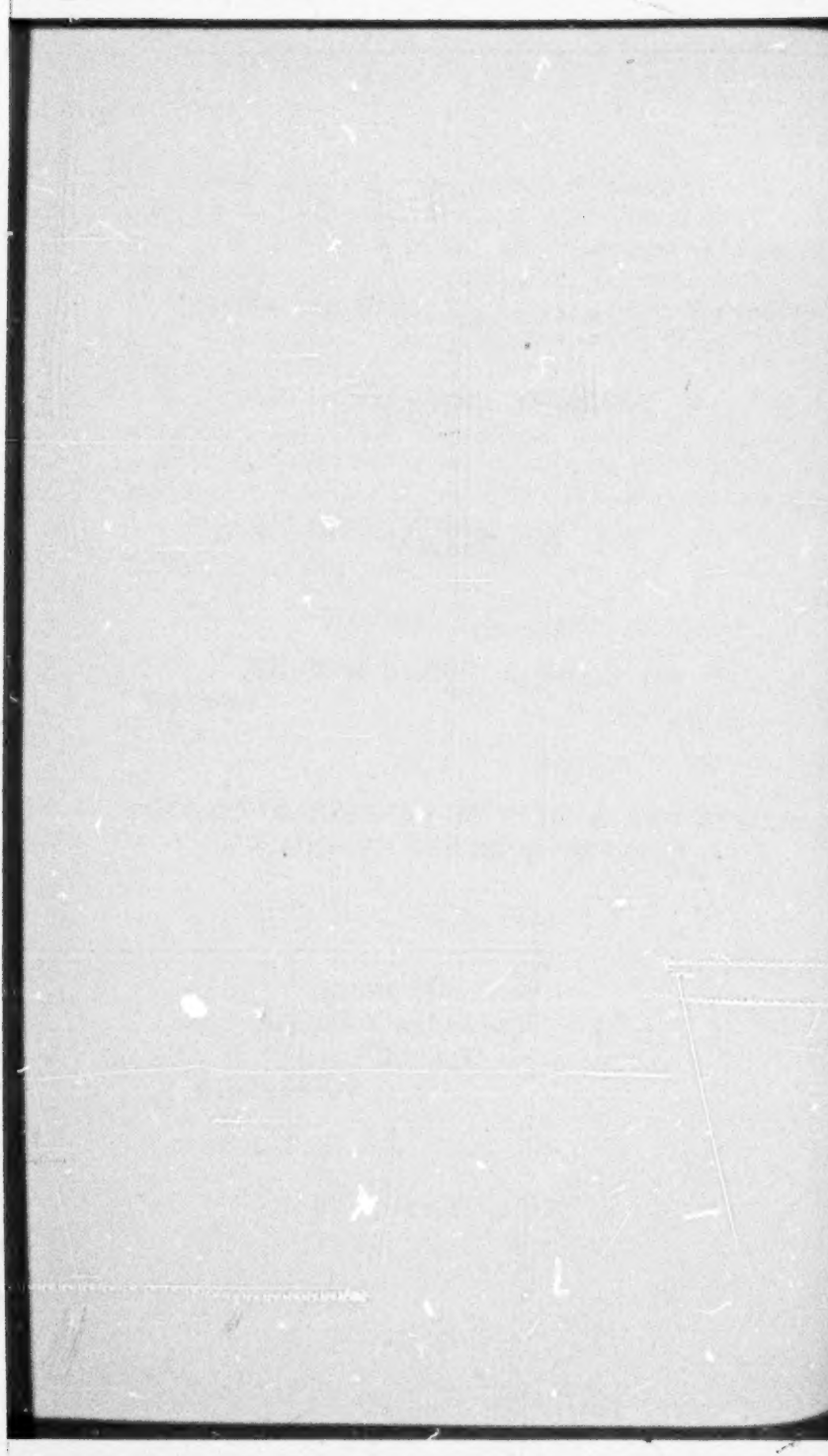
OCTOBER TERM, 1952

No. [redacted]26

IN THE MATTER OF NUBAR WRIGHT,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

WARREN E. MILLER,
Counsel for Petitioner,
910 17th Street, N. W.,
Washington, D. C.



INDEX

	Page
Petition for Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Question Presented	3
Statute Involved	3
Statement	3
Specification of Errors to Be Urged	4
Reasons for Granting the Writ	5
Conclusion	12
Appendix A—Statutes	13

CITATIONS

Cases:

Andrews v. *U. S.*, 162 U. S. 420, 40 L. Ed. 1023, 16 S. C. 798	7
Bartle v. *Nutt*, 29 (4 Pet.) U. S. 184, 7 L. Ed. 825	10
Brown v. *Mississippi*, 297 U. S. 278, 80 L. Ed. 682, 56 S. C. 461	11
Butts v. *U. S.*, 273 Fed. 38	9
Clarke, In re, 46 Nev. 304, 212 Pac. 1037	10
Copren v. *State Bar*, 183 P. 2d 833, 64 Nev. 364	2
Craig v. *Harvey*, 331 U. S. 367, 91 L. Ed. 1546, 67 S. C. 1249	5
Davidson, In re, 64 Nev. 514, 186 P. 2d 354	8
Goode v. *U. S.*, 159 U. S. 663, 40 L. Ed. 297, 16 S. C. 136	7
Grimm v. *U. S.*, 156 U. S. 604, 39 L. Ed. 550, 15 S. C. 470	7
Hebert v. *Louisiana*, 272 U. S. 312, 71 L. Ed. 270, 47 S. Ct. 103	11
Malinski v. *New York*, 324 U. S. 416, 89 L. Ed. 1039, 65 S. Ct. 781	11
Palco v. *Connecticut*, 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149	12
Price v. *U. S.*, 165 U. S. 311, 41 L. Ed. 727, 17 S. C. 366	7

Page

Rochin v. *California*, 342 U. S. 165, 96 L. Ed. 183, 72 S. C. 205 .....

Rosen v. *U. S.*, 161 U. S. 29, 40 L. Ed. 606, 16 S. C. 434 7

Selling v. *Radford*, 243 U. S. 46, 61 L. Ed. 585, 37 S. C. 377 5

Sexton, In re, 184 P. 2d 356, 64 Nev. 459 10

Snyder v. *Massachusetts*, 291 U. S. 97, 78 L. Ed. 674, 54 S. Ct. 630 11

Sorrells v. *U. S.*, 287 U. S. 435, 53 S. Ct. 210, 77 L. Ed. 413, 86 A. L. R. 249 ..... 2, 8, 9

Summers, Re Clyde W., 325 U. S. 561, 89 L. Ed. 1795, 65 S. C. 1307 5

Wright, In re, 232 P. 2d 398 7

Statutes:

Nevada Compiled Laws of 1929, Sections 565 and 604 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 679

IN THE MATTER OF NUBAR WRIGHT,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Nubar Wright, petitioner, prays that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Nevada entered in the above-entitled cause on October 17, 1952. A petition for rehearing was denied on November 13, 1952. An order extending the time within which to file this petition to and including March 28, 1953, was entered by this Court on February 7, 1953.

Opinions Below

On January 7, 1952, the State Bar of Nevada filed its "Report, Findings of Fact, Conclusions of Law and Recommendations of Board of Governors," dated January 4, 1952, with the Supreme Court of the State of Nevada. On October 17, 1952, the Supreme Court of the State of Nevada filed its opinion (R. 298), and on November 13, 1952,

it entered an order denying petition for rehearing (R. 311). The opinion of the Court is reported at 248 P. 2d 1080.

Jurisdiction

The judgment of the Supreme Court of Nevada was entered on October 17, 1952 (R. 298), and a rehearing thereon was denied November 13, 1952 (R. 311). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3). The Federal question in this case was raised below as follows:

1. Answer of petitioner to notice of misconduct by Local Administrative Committee of the State Bar of Nevada (R. 58).

2. Hearing before Local Administrative Committee of the State Bar (R. 106).

3. Petition for Review by Supreme Court of Nevada (R. 286, 287, 288).

4. Petition for Rehearing (R. 306).

Under Nevada law, an attorney can be removed or suspended from practice only by the Supreme Court of Nevada.[1] In so doing, that court reviews the entire record of the proceedings before the State Bar.[2]

The Supreme Court of Nevada passed upon the Federal question herein, which action was necessary to a decision in the case.[3]

---

[1] Section 604, Nevada Compiled Laws, 1929 (Appendix A).

[2] Section 565, Nevada Compiled Laws, 1929 (Appendix A); Copren v. State Bar, 183 P. 2d 833, 64 Nev. 364.

[3] "Next, it is contended that the offense was committed at the instigation and subject to the persuasion and inducement of Carpenter; that the criminal design originated not with petitioner but with Carpenter himself; citing *Sorrells* v. *U.S.*, 287 U.S. 435, 53 S. Ct. 210, 77 L. Ed. 413, 86 A.L.R. 249. We are satisfied from the record, however, that such was not the case." (Court's Opinion R. 301.)

Question Presented

Whether the disbarment of an attorney-at-law which rests solely upon evidence secured through an entrapment instigated by the Nevada State Bar is consistent with due process of law required by the Fourteenth Amendment of the Constitution of the United States.[4]

Statute Involved

The pertinent statutory provisions are printed in Appendix A, Infra, p. 13.

Statement

Petitioner, prior to the proceedings herein, was a duly licensed practicing attorney in the State of Nevada. On March 23, 1950, the Local Administrative Committee for Clark and Lincoln Counties, District No. 1, State Bar of Nevada, instituted proceedings against petitioner by charging that he had entered into an agreement with one Wayne Carpenter to violate the laws of the State of Nevada by securing for him a divorce without the establishment of a residence in Nevada as required by law (R. 51). The Local Administrative Committee, after a hearing, found the charge of misconduct sustained and recommended that petitioner be forever disbarred from practicing law in the State of Nevada (R. 42). The Board of Governors of the State Bar of Nevada concurred in this finding and recommendation as did the Supreme Court of Nevada, a petition

---

[4] Section 1 of the Fourteenth Amendment of the Constitution of the U.S. states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, libetry, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

for rehearing having been denied on November 13, 1952 (R. 1, 298, 311).

The Court below found that petitioner did, on March 15, 1950, in Las Vegas, Nevada, enter into an agreement with one Wayne Carpenter to violate the laws of the State of Nevada by securing a divorce for said Carpenter without the six weeks' residence prescribed by statute (R. 298). Wayne Carpenter was, in fact, Stanley E. Halstead, a private detective from California who was hired by a member of the Board of Governors of the State Bar of Nevada to entrap petitioner (R. 100-03).

According to arrangements made between the parties, Carpenter communicated with petitioner by telephone and then came to Las Vegas with a fictitious property settlement and Power of Attorney to a room engaged by his employer, Harvey D. Dickerson, a member of the Board of Governors of the Nevada State Bar. A microphone had been hidden in this room and connected to a recording device in another room. The alleged misconduct occurred during a four-hour conversation between petitioner and Carpenter, during which time a considerable amount of liquor was consumed—all provided by Carpenter. The four-hour conversation was recorded and constituted the only evidence of the alleged misconduct. Carpenter did not testify. The fraudulent divorce was never obtained and no papers were ever filed in court (Court's Opinion R. 298).

Specification of Errors to Be Urged

The Supreme Court of Nevada erred:

1. In holding that there was no entrapment.

2. In holding that a belief of former misconduct was a sufficient basis for entrapment, although actual proof of such former misconduct was not in the record.

3. In holding that there were no improper inducements offered petitioner including the liquor given him by the decoy.

4. In ordering the petitioner disbarred on evidence secured entirely through an entrapment.

Reasons for Granting Writ

The decision of the Court below denies petitioner due process of law guaranteed by the Fourteenth Amendment of the United States Constitution, since it was based exclusively on evidence obtained through an entrapment.

This Court has jurisdiction to review petitioner's disbarment by the Nevada Supreme Court because it violates a Federal right secured by the Constitution of the United States, to-wit, due process of law as guaranteed by the Fourteenth Amendment. *Re Clyde W. Summers,* 325 U.S. 561, 89 L. Ed. 1795, 65 S.C. 1307; *Selling* v. *Radford,* 243 U.S. 46, 61 L. Ed. 585, 37 S.C. 377.

The undisputed evidence clearly shows an entrapment.[5] A member of the Board of Governors of the State Bar, Harvey D. Dickerson, acting in that capacity[6] instigated and planned the entrapment which he, an attorney, characterized by that name (R. 100-03). He went to California to secure the decoy, a discredited private detective named Halstead, and to work out the details for involving peti-

---

[5] This Court will make independent examination of the facts when they are the basis for an asserted Federal right secured by the Constitution which has been denied by a State Court. *Craig* v. *Harvey,* 331 U.S. 367, 91 L. Ed. 1546, 67 S. C. 1249.

[6] "Q. Mr. Dickerson, when you commenced this course of conduct with Mr. Halstead and Mr. Gibbs, and Mr. Smith, were you acting as a member of the Board of Governors of the State Bar Association?

A. Most certainly.

Q. Were you given authority by the Board of Governors to proceed in investigations of this nature?

A. I have that authority as a member of the Board of Governors." (R. 103)

tioner in the unlawful enterprise.[7] He rented the hotel rooms where the meeting of petitioner and Halstead, who was now using the alias Carpenter, took place, and he had the microphone and recording machines installed (R. 101).[8]

---

[7] "Q. (To Mr. Dickerson) Did you make any independent investigation of Mr. Halstead?

A. No, I did not.

Q. Did Mr. Gibbs tell you he was a thoroughly reliable man?

A. No.

Q. Who told you he was a reliable man?

A. I asked him if he knew a reliable person we could get to do this job for us and he suggested Mr. Halstead.

Q. Had you ever met Mr. Halstead or heard of him before?

A. I never did.

Q. And did you make an inquiry to ascertain whether or not he had ever been Chief of Police of Arcadia?

A. No.

Q. Did you make any inquiry to ascertain from the Captain of the Arcadia Police Department, Bill Orr, about Mr. Halstead?

A. Mr. Morse, I can say this, that after talking with Mr. Halstead I was convinced that he could do the job in my own mind, and I made no inquiry concerning his background.

Q. And you don't know as a matter of fact that Mr. Halstead was connected with the narcotics division of the State of California out of the Los Angeles office?

A. No, I didn't know that.

Q. And that he had been discharged for framing his boss?

A. I didn't know that.

Q. And his boss was a Mr. Bicker?

A. No, I didn't know that." (R. 102-03)

"***There is no question about it being an entrapment. Mr. Gibbs said he knew a fellow who lived in Arcadia, California named Halstead, a former agent of the Treasury Department, narcotics division, a man who was retired, but it would require a trip to California to talk the matter over with him.

"We went to California, Mr. Gibbs and I on the 9th of March, and that evening at Mr. Halstead's home in Arcadia, we discussed the means of entrapping Mr. Wright, and Mr. Halstead suggested the plan under which we proceeded, that was on a Thursday night. We returned—the arrangements made were that on Monday or Tuesday, Mr. Halstead would call Mr. Wright from California and tell him that he was a prospective divorce client and ask him if he needed any papers." (R. 100)

[8] "I returned to Las Vegas, and I asked Mr. Gibbs and Mr. Smith if they would be able to mike one of the rooms at one of the hotels so that the entire conversation between Mr. Wright and Mr. Halstead could be recorded and they told me that it was very easy to do and that they could

Later this same individual acted as petitioner's prosecutor and appeared as a witness against him (R. 60, 99). The meeting between petitioner and Carpenter consumed approximately four hours (R. 59-60) during which time a considerable amount of liquor was consumed—all furnished by Carpenter (Court's Opinion, R. 301). An affidavit said to contain evidence of a previous similar offense by petitioner was offered as justification for the entrapment. This affidavit was denied admission in evidence. The Court in its opinion concedes "that actual proof of such earlier offense does not appear in the record * * *." (R. 300).[9]

This is not a case where mere opportunities or facilities for the commission of the offense were provided by officials. *Grimm* v. *U.S.*, 156 U.S. 604, 39 L. Ed. 550, 15 S.C. 470; *Goode* v. *U.S.*, 159 U.S. 663, 40 L. Ed. 297, 16 S.C. 136; *Rosen* v. *U. S.*, 161 U.S. 29, 40 L. Ed. 606, 16 S.C. 434; *Price* v. *U.S.*, 165 U.S. 311, 41 L. Ed. 727, 17 S.C. 366; *Andrews* v. *U.S.*, 162 U.S. 420, 40 L. Ed. 1023, 16 S.C. 798.

---

do it. I then secured two rooms at the Flamingo Hotel, rooms 209 and 213 in the names of Charles W. Smith, and the other under the name of Wayne Carpenter. And on the morning of the 15th of March, Mr. Smith and Mr. Gibbs took their recording equipment out to the Flamingo Hotel and installed it as they have testified here. On that evening, as the plane was supposed to get in with Mr. Halstead at 8:05 was late, and it was about 8:30 when we heard Mr. Halstead and Mr. Wright coming down the hall. I went to the door of room 213 and saw Mr. Wright and Mr. Halstead coming down the hall, and I saw them going into room 209. As soon as they were in the room—when they were coming down the hall we turned on the recording equipment and I immediately put on the ear phones and for the rest of the evening with the exception of the time when Mr. Gibbs or Mr. Smith was listening, I listened to the conversation and the recording equipment kept going all of the time. I heard Mr. Wright tell Mr. Halstead good bye about 12:10 A. M., and when Mr. Wright left the room I watched him go down the hall. During the time he was there I recognized his voice and I know Mr. Halstead's voice and I know who was speaking in the other room." (R. 100-01)

[9] On three occasions (R. 185, 186, and 204) petitioner told Carpenter he had never done anything like the proposed act before. Petitioner's previous unethical conduct mentioned in the Court's opinion (R. 303) and reported *In re Wright* at 232 P. 2d 398, was splitting fees with a layman.

Here the offense for which the petitioner was disbarred was instigated and elaborately planned and staged by a member of the Board of Governors of the State Bar. It was this individual who provided, through his decoy, the pressure and influences to which petitioner succumbed. The offense here did not originate in the mind of petitioner but was conceived in the brain of this official of the State Bar to entrap petitioner, so that he could be disbarred. There was no proof of a previous similar offense by petitioner, who was plied with liquor by the State Bar's agent who also made deceitful and fraudulent representation. There would have been no misconduct here but for the active participation of the decoy who presented an entirely fictitious set of circumstances including a fictitious power of attorney and property settlement (R. 260B-261), and there could have been no violation of Nevada laws without the same active participation. From the standpoint of the Nevada Bar the whole affair was nothing more than a conspiracy to propagate a violation of law,[10] which was impossible of consummation because of the fictitious nature of the pretended contemplated divorce action.

This Court in *Sorrells* v. *U.S.*, 287 U.S. 435, 77 L. Ed. 413, 53 S.C. 210, said:

> "In *Newman* v. *United States* (C.C.A. 4th) 299 Fed. 131, supra, the applicable principle was thus stated by Circuit Judge Woods: 'It is well settled that decoys may be used to entrap criminals, and to present opportunity to one intending or willing to commit crime. But decoys are not permissible to ensnare the innocent and law-abiding into the commission of crime. When the criminal design originates, not with the accused, but is conceived in the mind of the government officers,

---

[10] The Court below in its opinion apparently concedes that it would not be proper to secure disbarment by an entrapment but denies that an entrapment has occurred. (R. 301). See also *In re Davidson*, 64 Nev. 514, 186 P. 2d 354.

> and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.' "

To permit the action of the State Court to stand would be to approve that which is fundamentally repugnant to the American idea of fair play. This Court in the *Sorrells* case, *supra*, said [11] that entrapment was a defense in a criminal case because,

> "* * * 'Here the evidence strongly tends to prove, if it does not conclusively do so, that their first and chief endeavor was to cause, to create, crime in order to punish it, and it is unconscionable, contrary to public policy, and to the established law of the land to punish a man for the commission of an offense of the like of which he had never been guilty, either in thought or in deed, and evidently never would have been guilty of if the officers of the law had not inspired, incited, persuaded, and lured him to attempt to commit it.' "

The record here is devoid of proof of similar offense by petitioner but even had such proof been supplied, it would not have justified the instigation, and creation of a new offense by an officer of the highest court of the State. In *Sorrells* v. *U.S.*, *supra*, Mr. Justice Roberts [12] said:

> "Whatever may be the demerits of the defendant or his previous infractions of law these will not justify the instigation and creation of a new crime, as a means to reach him and punish him for his past misdemeanors. He has committed the crime in question, but, by

---

[11] In quoting with approval from "the leading case" of *Butts* v. *U.S.*, 273 Fed. 38.

[12] Justice Roberts in his separate opinion held that a defendant in an entrapment case, although guilty of an offense, must be discharged because "it is the province of the Court and of the court alone to protect itself and the government from such prostitution of the criminal law. The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention."

supposition, only because of instigation and inducement by a government officer. To say that such conduct by an official of government is condoned and rendered innocuous by the fact that the defendant had a bad reputation or had previously transgressed is wholly to disregard the reason for refusing the processes of the court to consummate an abhorrent transaction. It is to discard the basis of the doctrine and in effect to weigh the equities as between the government and the defendant when there are in truth no equities belonging to the latter, and when the rule of action cannot rest on any estimate of the good which may come of the conviction of the offender by foul means. The accepted procedure, in effect, pivots conviction in such cases, not on the commission of the crime charged, but on the prior reputation or some former act or acts of the defendant not mentioned in the indictment.

"The applicable principle is that courts must be closed to the trial of a crime instigated by the government's own agents. No other issue, no comparison of equities as between the guilty official and the guilty defendant, has any place in the enforcement of this overruling principle of public policy."

The counterpart of entrapment in the civil law[13] is the illegal scheme which the courts uniformly refuse to enforce. In *Bartle* v. *Nutt*, 29 (4 Pet.) U.S. 184, 7 L. Ed. 825, this Court thus expressed the reason for this refusal:

"* * * Public morals, public justice, and the well-established principles of all judicial tribunals, alike forbid the interposition of courts of justice to lend their aid to purposes like this. To enforce a contract which began with the corruption of a public officer, and progressed in the practice of known and willful

[13] The exact nature of a disbarment proceeding is not expressly stated in Nevada cases although it has been described as penal in nature. *In re Sexton*, 64 Nev. 459, 184 P.(2) 356; *In re Clarke*, 46 Nev. 304, 212 Pac. 1037. The misconduct charged against petitioner was an agreement to violate the laws of the State of Nevada (Court's Opinion, R. 298).

deception in its execution, can never be consummated or sanctioned by any court."

Due process of law is denied in this case because it was not consistent with fair play and justice for the Nevada State Bar to actively lure petitioner into an offense so as to disbar him and take away his right to earn a livelihood as an attorney. In *Brown* v. *Mississippi*, 297 U.S. 278, 80 L. Ed. 682, 56 S.C. 461, this Court stated:

> "• • • The due process clause requires 'that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' *Hebert* v. *Louisiana*, 272 U.S. 312, 316, 71 L. Ed. 270, 272, 47 S. Ct. 103, 48 A.L.R. 1102."

Regardless of the nature of the proceeding, an attorney's right to practice should not be taken away by methods which cannot be used against even the most heinous criminal. In *Rochin* v. *U. S.*, 342 U.S. 165, 96 L. Ed. 183, 72 S.C. 205, this Court said:

> "• • • Regard for the requirements of the Due Process Clause 'inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceeding [resulting in a conviction] in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses.' *Malinski* v. *New York*, *supra* (324 US at 416, 417, 89 L ed 1039, 65 S Ct 781). These standards of justice are not authoritatively formulated anywhere as though they were specifics. Due process of law is a summarized constitutional guarantee of respect for those personal immunities which, as Mr. Justice Cardozo twice wrote for the Court, are 'so rooted in the traditions and conscience of our people as to be ranked as fundamental,' *Snyder*

v. *Massachusetts*, 291 US 97, 105, 78 L ed 674, 677, 54 S Ct 330, 90 ALR 575, or are 'implicit in the concept of ordered liberty.' *Palko* v. *Connecticut*, 302 US 319, 325, 82 L ed 288, 292, 58 S Ct 149."

The case raises an important and serious question as to the limitations the due process clause of the Fourteenth Amendment places upon State proceedings to disbar an attorney.

The State action here was to instigate and lure petitioner into an offense so that he could be disbarred. To use entrapment as a basis for the disbarment violates due process because it offends fair play, justice and deep-rooted tradition.

Conclusion

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

WARREN E. MILLER,
Counsel for Petitioner.

APPENDIX A

Nevada Compiled Laws of 1929:

Section 604: "Suspension of Attorney. An attorney and counselor may be removed or suspended by the Supreme Court, and by no other court in the Territory, for either of the following causes arising after his admission to practice:

"(1)—By his being convicted of a felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence.

"(2)—For willful disobedience or violation of the order of the court requiring him to do or forbear an act connected with or in the course of his profession.

"(3)—For misconduct in office, or for good cause shown."

Section 565: "Disbarment, Etc. The board of governors shall have power, after a hearing for any of the causes set forth in the laws of the State of Nevada warranting disbarment, or suspension, to disbar members or to discipline them by reproval, public or private, or by suspension from practice, and the board shall have power to pass upon all petitions for reinstatement. The board of governors shall keep a transcript of the evidence and proceedings in all matters involving disbarment or suspension and shall make findings of fact and a decision thereon. Under the making of any decision resulting in disbarment or suspension from practice said board shall immediately file a certified copy of said decision, together with said transcript and findings, with the clerk of the supreme court. Any person so disbarred or suspended may, within sixty days after the filing of said certified copy of said decision, petition said supreme court to review said decision or to reverse or modify the same, and upon such review the burden shall be upon the petitioner to show wherein such decision is erroneous or unlawful. When sixty days shall have elapsed after

the filing of said certified copy, if no petition for reviews shall have been filed, the supreme court shall make its order striking the name of such person from the roll of attorneys or suspending him for the period mentioned in said decision. If upon review, the decision of said board of governors be affirmed, then said court shall forthwith make said order striking said name from the rolls or of suspension. The board shall have power to appoint one or more committees to take evidence on behalf of the board and forward the same to the board with a recommendation for action by the board. Nothing in this act contained shall be construed as limiting or altering the powers of the courts of this State to disbar or discipline members of the bar as this power at present exists."

(7293)

56

Office - Supreme Court
FILED
JUL 8 195
HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1952

No. 26

NUBAR WRIGHT,

Petitioner,

vs.

STATE BAR OF NEVADA,

Respondent.

BRIEF FOR RESPONDENT.

TOY R. GREGORY,
308 Fremont Street,
Las Vegas, Nevada,
Counsel for Respondent, State Bar of Nevada.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

PAGE

Statement 1

(a) Offense complained of 1

(b) Disciplinary proceedings 2

(c) Prior disciplinary proceedings 4

Constitutional and statutory provisions and rules involved 4

Argument 6

Point I. Basis for disciplinary proceedings was well-founded 6

Point II. The requirements of due process are fully met by due notice and an opportunity to be heard, all of which were accorded petitioner 8

Conclusion 13

TABLE OF AUTHORITIES CITED

CASES	PAGE
Bradwell v. Illinois, 83 U. S. 130, 21 L. Ed. 442	10
Brents v. Stone, 60 Fed. Supp. 82	10
Emmons v. Smith, 58 Fed. Supp. 869; aff'd, 149 F. 2d 869; cert. den., 326 U. S. 746	10
Isserman, In re, 9 N .J. 269, 87 A. 2d 903	13
Light v. State Bar of California, 94 P. 2d 35	7
Lockwood, In re, 154 U. S. 116	10
Louisville & N. R. v. Schmidtt, 177 U. S. 230	9
Mitchell v. Greenough, 100 F. 2d 184; cert. den., 306 U. S. 659	10
Selling v. Radford, 37 S. Ct. 377, 243 U. S. 46	11
Wall, Ex parte, 107 U. S. 265	7, 8, 9
Washoe County Bar Assn. v. Schoular, 44 Nev. 208	6
Wright, In re, 232 P. 2d 398	4

STATUTES AND OTHER AUTHORITIES CITED.

Canons of Ethics of American Bar Association (1947 Ed.), Canon 29, Opinion 2	7
Nevada Compiled Laws, 1929, Sec. 604	5
Rules of Procedure of State Bar of Nevada, Rule XXIV	4
State Bar Act of Nevada, Sec. 34	4

IN THE

Supreme Court of the United States

October Term, 1952
No. 679.

NUBAR WRIGHT,

Petitioner,

vs.

STATE BAR OF NEVADA,

Respondent.

BRIEF FOR RESPONDENT.

Statement.

Petitioner, Nubar Wright, was admitted as an attorney at law in the State of Nevada in the month of April, 1937. [R. 263.]

A. Offense Complained Of.

Nubar Wright, a duly licensed and practicing attorney at law in Las Vegas, Nevada, did, on March 15 and March 16, 1950, in Room 209 of the Flamingo Hotel, Las Vegas, Nevada, at or about the hours running from 8:30 P. M., March 15, 1950, to 12.10 A. M., March 16, 1950, enter into an agreement with a person known to accused as Wayne Carpenter, to break and violate the laws of the State of Nevada, by securing for said person a divorce based on six weeks residence in the State of Nevada, without said person remaining in the State of Nevada, or any part thereof, for the period of six weeks, as required by Law. [R. 4-5.]

B. Disciplinary Proceedings.

By notice personally served on him in Las Vegas, Nevada [R. 51-52-53], on March 24, 1950, Wright was requested to appear before the Local Administrative Committee for Clark and Lincoln Counties, District No. L of the State Bar of Nevada, on the 4th day of April, 1950, then and there to show cause why he should not be disbarred, suspended or reproved for the offense set forth in Paragraph (A) hereinbefore set forth.

That Wright appeared before the Local Administrative Committee on April 4, 1950, with his counsel. That hearings on the matter were held before the Local Administrative Committee on April 4, 18 and 21, 1950; May 2, 3 and 17, 1950; June 2, 1950; and November 21 and 27, 1950, and that on all of these occasions Wright appeared in person and with counsel. [R. 48.] That at all of the hearings the full right of direct and cross-examination was afforded Mr. Wright and counsel.

That Wright, through Counsel, filed an Answer to the Notice to Show Cause, on April 18, 1950. [R. 56.]

That on January 22, 1951, the Local Administrative Committee filed its Findings of Fact and Conclusions of Law, with the Board of Governors of the State Bar of Nevada, recommending disbarment. [R. 48.]

That on February 15, 1951, Wright filed a statement in opposition to the Report and Recommendation of the Local Administrative Committee. [R. 32.]

That on April 10, 1951, the Local Administrative Committee filed with the Board of Governors its Reply to Accused's Opposition to their Report. [R. 29.]

That on July 5, 1951, the Board of Governors of the State Bar of Nevada, notified Wright and counsel and the Secretary of the Local Administrative Committee that a hearing would be afforded Wright before said Board on the 14th day of September, 1951, at Reno, Nevada. [R. 28.]

That on September 14, 1951, Wright appeared before the Board of Governors at Reno, Nevada, with his counsel, at which hearing Wright was afforded an opportunity to state his side of the case and his counsel were afforded opportunity to argue his defense. [R. 7.]

That thereafter the Board of Governors listened to the recordings introduced as evidence before the Local Administrative Committee and/or studied the transcript of testimony before the Local Administrative Committee.

That on January 7, 1952, the Board of Governors of the State Bar of Nevada, filed with the Supreme Court of the State of Nevada, its Report, Findings of Fact, Conclusions of Law and Recommendation, in which said Board recommended to the Supreme Court that Nubar Wright be disbarred. [R. 1.]

That on March 3, 1952, Wright petitioned the Supreme Court of the State of Nevada for reversal of Findings and Recommendations of the Board of Governors. [R. 263.]

That on April 16, 1952, an Answer on behalf of the Board of Governors in opposition to the petition for Review was filed with the Supreme Court. [R. 288.]

That on April 18, 1952, Wright filed with the Supreme Court, his Reply to Complainant's Answer. [R. 293.]

Thereafter Wright, with Counsel appeared before the full membership of the Supreme Court of the State of Nevada, with Counsel, and full argument was allowed Wright as well as the State Bar of Nevada.

Thereafter, on October 17, 1952, the Supreme Court of the State of Nevada, in a unanimous opinion, written by Mr. Justice Merrill, followed the recommendation of the Local Administrative Committee and the Board of Governors of the State Bar of Nevada, and ordered Nubar Wright's name stricken from the roll of practicing attorneys in the State of Nevada. [R. 298.]

Rehearing was denied November 13, 1952. [R. 311.]

C. Prior Disciplinary Proceedings.

The Supreme Court of the State of Nevada had suspended Wright for six months for unethical conduct sixteen months prior to the decision disbarring him.

In re Wright, 232 P. 2d 398.

Constitutional and Statutory Provisions Involved.

Section 34, State Bar Act:

> "The board, or any local administrative committee shall of its own motion, and without the filing or presentation of any complaint—have power to initiate and conduct investigations of all matters affecting or relating to the State Bar, or its affairs, or the practice of law, or the discipline of the members of

the State Bar,—and in the conduct of such investigations shall have power to take and hear evidence touching the matters under investigation, etc."

Rule XXIV of the Rules of Procedure of the State Bar of Nevada:

"The Board of Governors or a local administrative committee may of its own motion, initiate proceedings for disbarment, suspension, or discipline of a member of the State bar. If such proceeding is initiated by a committee, such notice shall be signed by the Secretary of such committee or by a person designated by such committee. Such notice shall contain a concise statement in simple language of the alleged misconduct of the accused and shall not be verified. Such notice may contain a statement of the time and place of the hearing and a direction to the accused then and there to show cause why he should not be disbarred, suspended or reproved, in which event said notice shall be served not less than ten (10) days before the time of hearing, and no answer need be filed."

Section 604, Nevada Compiled Laws, 1929:

"An attorney and counsellor may be removed or suspended by the Supreme Court, and by no other court in this territory, for either of the following causes arising after his admission to practice: First —Upon his being convicted of a felony or misdemeanor involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second—For wilful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession. Third—For misconduct in office or for good cause shown."

ARGUMENT

POINT ONE.

The Specification of Error by Petitioner on Page 4 of His Brief, to the Effect That the Supreme Court of the State of Nevada Held That There Was No Entrapment, Is Not Disputed by the Respondent.

Mr. Justice Merrill in his learned decision [R. 300], states:

> "Petitioner's principal defense before this Court is entrapment. It is first contended that the record does not show any foundation or basis for such resort to a decoy. This contention we must reject. It is clear from the record that Carpenter's employees believed and had reasonable cause to believe not only that petitioner was a person disposed to commit the offense, but that he had already committed a similar offense on at least one occasion. That actual proof of such earlier offense does not appear in the record does not destroy the foundation of such cause for belief."

The entrapment rule applicable in criminal cases is not applicable in administrative matters before the bar of a state. As the Supreme Court of the State of Nevada pointed out in the case of *Washoe County Bar Association v. Scoular,* 44 Nev. 208:

> "The legislature has conferred upon the Court the sole power to remove or suspend an attorney, to find the accused guilty or not guilty. It is not a civil action. The procedure is peculiar to itself and is clearly outlined by statute.

"It is the duty of the proper bar association on its own initiative to expose and remedy the improper practices on the part of its members."

Opinion 2, Canon 29, Canons of Ethics, American Bar Association, 1947 Edition.

The Supreme Court of the State of California has stated:

"If the combined facts as found by both the committee and the board were supported by substantial evidence and amounted to a violation of petitioner's duty as an attorney at law, this court is warranted in sustaining the recommendation of the Board of Governors to the effect that petitioner be disbarred."

Light v. State Bar of California, 93 P. 2d 35.

The jurisdiction of State courts to determine who shall and shall not practice before them has been upheld by the Supreme Court of the United States.

"A proceeding to disbar an attorney is one within the proper jurisdiction of the Court of which he is an attorney, and does not violate the constitutional provisions which require an indictment and trial by jury in criminal cases, as it is not a criminal proceeding to punish an attorney, but intended to protect the court from the ministrations of persons unfit to practice as attorneys."

Ex parte Wall, 107 U. S. 265.

POINT TWO.

Petitioner Argues That He Was Denied Due Process of Law, in That the Security of Evidence Against Him by the State Bar of Nevada, Was Contrary to and in Violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A reference to the first part of this brief relating to the offense complained of and the subsequent hearings before the Local Administrative Committee, the Board of Governors and the Supreme Court of the State of Nevada, will reveal that Wright was given full notice of the charge against him, full opportunity to explain his action, and full opportunity to cross-examine the witnesses of the State Bar and to present witnesses on his behalf. At all times he was represented by able counsel.

As was pointed out by the Supreme Court of the United States in *Ex parte Wall,* 107 U. S. 265:

> "The action of the Court in cases within its jurisdiction is due process of law. It is a regular and lawful method of proceeding, practiced from time immemorial. Conceding that an attorney's calling or profession is his property, within the true sense and meaning of the Constitution, it is certain, that in many cases, at least, he may be excluded from the pursuit of it by the summary action of the court of which he is an attorney. The extent of the jurisdiction is a subject of fair judicial consideration. That it embraces many cases in which the offense is indictable is established by the overwhelming weight of authority. This being so, the question whether a particular class of cases of misconduct is within its scope cannot involve any constitutional principle.

"It is a mistaken idea that due process of law required a plenary suit and a trial by jury, in all cases where property or personal rights are involved.

"In all cases, that kind or procedure is due process of law which is suitable and proper to the notice of the case, and sanctioned by the established customs and usages of the court."

The Court stated in *Louisville and N. R. v. Schmidtt*, 177 U. S. 230:

"It is no longer open to contention that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend."

The Supreme Court of the State of Nevada had before it Petitioner's' record of a prior conviction and suspension for unethical conduct, as well as the record upon which the Board of Governors recommended disbarment. In the exercise of its inherent and constitutional power to discipline one of its offcers, after due notice and hearing, it judicially determined petitioner by reason of his unethical conduct was no longer a fit and proper person to continue as a member of the State Bar of Nevada.

As pointed out in *Ex parte Wall, supra,* at page 273:

"It is laid down in all the books in which the subject is treated, that a court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to

punish them by fine and imprisonment for misconduct and contempts, and, in gross cases of misconduct, to strike their names from the roll. If regularly convicted of a felony, an attorney will be struck off the roll of course, whatever the felony may be, because he is rendered infamous. If convicted of a misdemeanor which imports fraud or dishonesty, the same course will be taken. He will also be struck off the roll for gross malpractice or dishonesty in his profession, or for conduct gravely affecting his professional character."

As was said in *Bradwell v. Illinois* (1872), 83 U. S. 130, 139, 21 L. Ed. 442:

". . . the right to control and regulate the granting of a license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the Federal Government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license."

The right or license to practice law is not a "Property Right," nor is it a "privilege" or an "immunity" within the protection of the Fourteenth Amendment.

Brents v. Stone (D. C. E. D. Ill., 1945), 60 Fed. Supp. 82;

Emmons v. Smith (D. C. Mich., 1944), 58 Fed. Supp. 869, aff'd 149 F. 2d 869, cert. den. 326 U. S. 746;

Mitchell v. Greenough, 100 F. 2d 184, cert. den. 306 U. S. 659;

In re Lockwood, 154 U. S. 116.

In *Selling v. Radford* (Sup., 1917), 37 S. Ct. 377, 243 U. S. 46, 61 L. Ed. 585, Ann. Cases 1917D, petitioners, members of the Bar of Detroit, Michigan, sought respondent's disbarment in the United States Supreme Court. Respondent, admitted to practice before the United States Supreme Court based upon his admission in Michigan, was disbarred by Michigan, but respondent continued to hold himself out as a practicing lawyer claiming he was still a member of the Bar of the United States Supreme Court. The Court held it had no authority to reexamine or reverse, as a reviewing Court, the action of the Supreme Court of Michigan, in disbarring a member of the Bar of the courts of that state for personal and professional misconduct.

Each court, state or federal, and each administrative body, before which an attorney is entitled to practice, acting separately and independently, has the right to determine for itself petitioner's fitness to continue practicing before it, and such determination is not in the sense of an additional punishment. In this instance the Supreme Court of the State of Nevada determined that Wright's fitness to continue as an officer of the State Court had terminated in that:

> "We find nothing of mitigation in the record. We take notice of the fact that this is not petitioner's first offense. Sixteen months ago he was by this court ordered suspended from the practice of law for a period of six months for unethical conduct."

Petitioner would have this Honorable Court believe that his disbarment was based upon an isolated instance of unethical conduct. The petitioner's minimizing of his con-

duct is met by the strong and unmistakeable language of Justice Merrill [R. 298, *et seq.*, citing from 299, 300]:

> "During the course of these proceedings petitioner has asserted three principal defenses. Before the administrative committee his contention was that he had entered into his agreement with Carpenter deliberately but with no intention of ever carrying it through; that he suspected that a trap was being laid for him and acted as he did with the sole purpose of determining and exposing those who were attempting the entrapment.
>
> "Our study of the record renders it impossible for us to accept this contention. The conduct of the petitioner throughout his recorded conversation with Carpenter was not that of a man wary of entrapment. The admissions there freely made by him do not confine themselves to the instant act of misconduct but concern as well past actions and courses of conduct which certainly never would have been admitted had petitioner had the slightest cause to suspect Carpenter. We are inescapably led to the conclusion that during the conversation in question, he dealt with Carpenter in full confidence that the man who as he represented himself to be and with every intention of carrying out his illicit agreement.
>
> "Before the Board of Governors, petitioner contended that he was so plied with liquor by Carpenter that his mind became befogged and that in entering into his agreement he did not know what he was doing; that he never would have entered into the agreement had he not been intoxicated. This defense, too, we must reject.
>
> "In the first place, it is wholly and flagrantly inconsistent with the earlier defense, made under oath before the administrative committee. A man who

claims that from the outset he had suspected and deliberately set out to expose his entrappers cannot, in the same breath, be heard to say that he knew not what he was doing.

"Furthermore the record again refutes this contention. Petitioner's constant admonitions as to the necessity for caution and future silence; his explorations of factual danger zones; his recognition of potential weak spots in the false story and advice as to explanations to be made thereof; all bespeak a practitioner experienced in such matters and a mind fully alert to the dangerous vulnerability of a perjured case and to the consequences of deliberate professional misconduct. Before the board petitioner at least three times testified that intoxication overcame him during the second half of the four-hour conversation. The record demonstrates that the agreement was fully discussed during the first two hours and was reached immediately following dinner served in the room, the consuming of which occupied approximately thirty minutes of that time."

We call to this Court's attention also the recent case of *In re Isserman*, 9 N. J. 269, 87 A. 2d 903.

Conclusion.

It is respectfully submitted that petitioner's petition for a writ of certiorari to the Supreme Court of the State of Nevada to review his disbarment by the Supreme Court of the State of Nevada be denied.

Dated: Las Vegas, Nevada, June 26, 1953.

TOY R. GREGORY,

Counsel for Respondent, State Bar of Nevada.